

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

FILED
08/09/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0914-R-2023
Lambert, Kathryn
3.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Michael A. Shapiro

CASE 43B-0914-R-2023
43B 193603-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following issue remark:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE SESESE SEC 33 TWP 5S RGE 9E PARK COUNTY.

The issue remark was not addressed and resolved during the objection process. The Legislature has directed the Water Court to resolve the issue remarks using the procedures set forth in section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark. In this instance, the information in the claim file is sufficient to address and resolve the issue remark. In order to give the claimant an opportunity to review the remark and the Court's determination, and to file additional evidence if he so chose, an Order Consolidating Case and Setting Filing Deadline was issued on April 14, 2023, setting a May 12, 2023 filing deadline. The claimant did not file anything. On May 16, 2023 the Order Entering Default and Order Setting Deadline Pursuant to Section 85-2-248 (9)(a), MCA was issued, setting a June 16, 2023 filing deadline. Nothing was filed. The documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree states that the place of use legal description is the SESE section 33, T5S, R9E, PARK. The place of use legal description should be the SESESE section 33, T5S, R9E, PARK. The issue remark should be removed as addressed and resolved.

2. The Preliminary Decree also includes the following notice remark:

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE

ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information in the claim file is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (9), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Michael A. Shapiro
501 Canal Dr #D
Carolina Beach, NC 28428

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 193603-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MICHAEL A SHAPIRO
501 CANAL DR #D
CAROLINA BEACH, NC 28428

Priority Date: DECEMBER 31, 1935

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 30.00 GPM

Volume: 5.00 AC-FT

Households: 1

Maximum Acres: 3.64

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESESE	33	5S	9E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3.64		SESESE	33	5S	9E	PARK

Total: 3.64